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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Expedited Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration	)	CC Docket No. 00-218
In the Matter of Petition of Cox Virginia Telecom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and for Arbitration	)	CC Docket No. 00-249
In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc.	)	CC Docket No. 00-251

REPLY TO OPPOSITION TO VERIZON'S PETITION FOR CLARIFICATION AND RECONSIDERATION OF JULY 17, 2002 MEMORANDUM OPINION AND ORDER

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Verizon Virginia Inc. ("Verizon") respectfully submits this reply to the September 10, 2002 filings of AT&T, Cox and WorldCom in opposition to Verizon's Petition for Clarification and Reconsideration ("Petition") of the Memorandum Opinion and Order ("*Order*") released by the Wireline Competition Bureau on July 17, 2002.

INTRODUCTION

Verizon's Petition asks the Bureau to reconsider or clarify its holdings to the extent those holdings do not comply with the Act or the Commission's rules. The Bureau should grant these requests based on the merits of the arguments set forth in the Petition and below. WorldCom tries to avoid effective Bureau consideration of these issues by misstating the standard the Bureau is to apply in reviewing them.[1] But the arbitrary and capricious standard of review WorldCom suggests is, of course, the standard applicable to a *court's* review of a Commission order. It is not the standard for the Bureau to use when reconsidering its own findings. Section 1.106 of the Commission's rules does not limit the Bureau's discretion in reconsidering a decision such as this one. The Bureau should exercise that discretion to ensure that its rulings in this matter conform to the requirements of the Act, Commission precedent, and its rules.

I. NETWORK ARCHITECTURE ISSUES

The CLECs spill a lot of ink disputing positions that Verizon did not take in its Petition. Contrary to WorldCom and AT&T rhetoric, Verizon did not ask the Bureau to reconsider its choice of the CLECs' architecture models over Verizon's "GRIP" or "VGRIP" proposals. Indeed, the Bureau granted that, in highlighting its proposals, "Verizon raises serious concerns

[1] WorldCom Opp. at 1-2.

about the apportionment of costs caused by a competitive LEC's choice of points of interconnection," but concluded that those concerns are better addressed in a broader context: "the Commission is currently examining similar concerns on an industry-wide basis in a pending rulemaking proceeding. Should the Commission's rules governing interconnection and reciprocal compensation change during that proceeding, we expect the agreements' change of law provisions to apply."[2]

Instead, the Petition argued that, in the interim, the language the Bureau adopts for these contracts must conform to the Commission's existing rules. The Bureau itself concluded, as it must, that it is required to conform the agreements to the Commission's rules, and that it therefore may "either adopt one party's proposal or reject both," and modify a proposal "to bring the agreement into conformity with the Act and Commission rules."[3] But some of the CLEC language the Bureau adopted appears to conflict with three of the Commission's fundamental rules on interconnection:

(i) Rule 51.305(a)(2)'s requirement that an interconnection point for exchange of traffic between the carriers must be "[a]t any technically feasible point *within the LEC's network*," and not, therefore, at the CLEC's switch;

(ii) Rule 51.701(c)'s definition of the "transport" portion of the reciprocal compensation charge as "the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) *from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party,*" a definition that excludes additional charges – beyond reciprocal compensation – by either carrier for transport from the interconnection point to the terminating carrier's serving end office; and

[2] *Order* ¶ 54; *see also id.* at ¶¶ 69 & 91.

[3] *Id.* ¶ 31.

(iii) the requirements of Rules 51.711(a)(1) and (b) that reciprocal compensation rates (including the "transport" portion) must be symmetrical unless the CLEC proves a higher rate is justified by its costs.

The CLECs' attempts to ignore these rules (or misinterpret them into dead letters) must be rejected.

AT&T appears at first to agree that it must comply with the Rule 51.305(a)(2) requirement that its points of interconnection be within Verizon's network; it promises to "designate its POI for the delivery of its traffic at a point on Verizon's network" in those "few cases" where AT&T's switch is not already on Verizon's network.[4] It promptly turns around, however, and claims the right to establish *different* POIs for traffic it originates and for traffic Verizon originates, with each kind of POI located on the terminating party's network.[5] This flatly contradicts the clear import of the Commission's rules -- that POIs will be within Verizon's network (*e.g.*, at Verizon's tandem switch wire centers -- but not at AT&T's switch locations) and that the same POIs are available for traffic passing either direction. The definition of reciprocal compensation describes rates applicable to traffic flowing either direction from the same "*interconnection point between the two carriers* to the terminating carrier's end office switch that directly serves the called party."[6] AT&T points to nothing in the Commission's rules that contemplates *one-way* interconnection points – because there is nothing.

The reason for AT&T's position becomes clear when it claims, without discussion of Rules 51.305(a)(2) or 51.701(c), that in order to reach the AT&T-bound POI located at AT&T's

[4] AT&T Opp. at 2 n.1.

[5] *Id.* at 3 n.2.

[6] 47 C.F.R. §51.701(c).

switch on its network, Verizon should "deliver traffic to AT&T's collocated space and use AT&T's facilities to reach its POI" or "lease facilities from a third party."[7] AT&T clearly wants to force Verizon to buy from AT&T (or a proxy) transport *to the POI* (which AT&T mistakenly argues is its switch) for Verizon-originated traffic. But under the Commission's rules, there is no transport for Verizon to buy from either AT&T or a third party in order to get to the POI, because under the rules, the interconnection point is already "within the incumbent LEC's network." And once Verizon, as the originating party, transports its traffic to the POI and hands it off to AT&T, Rules 51.701(c) and 51.711(a)(1) require AT&T to complete the transport and termination of the traffic, charging only symmetrical reciprocal compensation rates.

Of course, the same compensation rules apply to traffic passing through the POI in the other direction, from AT&T to Verizon. Thus, contrary to AT&T's final claim,[8] there is nothing asymmetrical about Verizon's reading of the Commission's compensation rules. Each party is responsible to bring its traffic to "the interconnection point between the two carriers," and from there each carrier charges the other the same reciprocal compensation rate to get the traffic to its end users – charges which include for both carriers the same elements of "transport," including "transmission and any necessary tandem switching," and "termination" at the terminating carrier's end office, including delivery to the end user's premises.[9]

Indeed, as the Bureau itself recognized, to the extent the rules are in any sense asymmetrical, it is because they have been read to require Verizon to carry traffic to a single interconnection point on its network within a LATA. In other words, under this reading of the

[7] AT&T Opp. at 2-3.

[8] AT&T Opp. at 2-3.

rules, Verizon *already* has to incur the cost of transporting traffic across the LATA solely because of the CLECs' choice of network architectures. The reading now urged by AT&T and the other CLECs is untenable, and would require Verizon to incur still further transport costs to carry the traffic from the single point on Verizon's network to some distant location on the CLECs' network (*e.g.*, to the CLEC switch). That, of course, would merely add insult to injury by further compounding the very real problem that the Bureau recognized already exists under its reading of the existing rules.

The Bureau should clarify that the AT&T agreement (as well as the agreements of the other Petitioners) must be read to conform to the existing rules – for traffic in both directions – and to the extent that it cannot be so read, modified to conform.[10]

Cox admits that it seeks more than the Commission's rules allow when it makes the same demand that interconnection points be located on its own network.[11] Cox argues that Rule 51.305(a)(2) creates an "inevitable gap that the rules do not cover."[12] Cox is wrong. Rule 305(a)(2) is clear that the interconnection point must be "within the incumbent LEC's network." As Cox declared in its introduction, the Bureau "correctly concluded that it would not adopt

[9] 47 C.F.R. §§ 51.701(c)-(e), 51.711(a).

[10] Several sections of the AT&T and WorldCom agreements must be modified to conform to the rules. For example, contrary to Rules 51.305(a)(2) and 51.701(c), Section 1.3 of AT&T's Schedule 4 erroneously suggests that the point of interconnection will be at "AT&T's switch serving the terminating AT&T end-user." Under the language in § 1.5 of AT&T's Schedule 4, AT&T could impermissibly charge Verizon transport charges beyond those transport components of reciprocal compensation.

[11] Cox Opp. at 19 ("[T]here is nothing in the Commission's rules that *forbids* the establishment of IPs on a CLEC's network. Section 51.305(a)(2) of the rules describes the minimum obligations of an ILEC. It is not a limitation on where interconnection can take place under an agreement.") (emphasis added).

[12] Cox Opp. at 20.

contractual provisions that violated existing rules."[13] Accordingly, the Cox agreement must conform with the Commission's rules, which require traffic exchange at an interconnection point or points within Verizon's network.[14]

A. ISSUE I-4: END OFFICE TRUNKING.[15]

Verizon's Petition asked the Bureau (i) to require Cox and AT&T to establish direct end office trunking when the level of traffic destined for a particular end office reaches the DS-1 level and (ii) to clarify that if WorldCom establishes a single point of interconnection at a single Verizon tandem, it should establish separate trunk groups for traffic destined to other tandems in the LATA. The CLECs' oppositions miss the point of Verizon's position. They cling to the discredited claim that grooming their traffic into separate trunks aimed at particular end offices or tandems conflicts with the CLECs' right to select the technically feasible point of interconnection on Verizon's networth ("POI").[16] The Bureau explicitly rejected this CLEC position, and properly so.[17]

The location at which CLEC traffic is handed off to Verizon is not affected in the least by a requirement that the traffic handed off there be groomed into trunk groups with like destinations, so that the traffic can be routed efficiently through Verizon's network. Because

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[13] Cox Opp. at 2.

[14] Several sections of the Cox agreement must be modified. For example, Cox's proposed 4.2.2 conflicts with the Commission's rules by stating that the "IPs [will be] on the Cox network." Similarly, when read together with the language adopted for § 4.2.2, § 4.2.3 of Cox's agreement would require Verizon to pay Cox for transport (beyond reciprocal compensation) from the point of interconnection, which could be on Cox's network, to Cox's switch.

[15] *See Order* ¶¶ 77-91.

[16] *See* AT&T Opp. at 4; Cox Opp. at 5; WorldCom Opp. at 8.

[17] *See Order* ¶ 91. The Bureau found that "implementing direct end office trunks does not entail changing the location of a tandem point of interconnection." *Order* ¶ 91.

Verizon provides the transport from the single point of interconnection, requiring CLECs merely to groom their traffic into separate trunks before handing it off at this point imposes no extra network transportation costs on the CLECs; it merely allows Verizon to handle and route CLEC traffic as efficiently as it does its own. By contrast, the ruling the CLECs seek – that they can drop all traffic in a LATA in an unsorted and undifferentiated pile on the floor, and require Verizon to route it wastefully through multiple switches – imposes costs and increased risks of network blockage on Verizon, but no benefit on the CLECs, except to the extent that they derive a perverse satisfaction from impeding the operation of Verizon's network.

1. Cox And AT&T Confuse The Ability To Select The POI With A Network Engineering Standard.

Cox and AT&T mistakenly claim that Verizon must prove by clear and convincing evidence that routing trunks to a Verizon tandem above the DS-1 threshold is technically infeasible because it affects "interconnection."[18] They are wrong. Paragraph 203 of the *Local Competition Order*, on which they rely, provides that "to justify a refusal to provide interconnection or access at a ***point*** requested by another carrier, incumbent LECs must prove . . . with clear and convincing evidence, that specific and significant adverse impacts would result from the requested interconnection." Plainly, this paragraph addresses when Verizon refuses a CLEC request to establish a *point* of interconnection. As the Bureau has already ruled, however, Verizon is not refusing either carrier access to Verizon's network at a *point*. Instead, Verizon is asking that Cox and AT&T hand off their traffic at that point in a manner that allows Verizon to route the traffic efficiently (*i.e.*, in a manner comparable to how Verizon handles its own traffic)

[18] *See* Cox Opp. at 5 (*citing Local Competition Order*, 11 FCC Rcd at 15606); AT&T Opp. at 4-5.

after Verizon receives it.

AT&T and Cox claim that Verizon's evidence that CLEC interconnection demands are accelerating the exhaust of Verizon's tandem switches was inadequate.[19] Verizon presented substantial evidence, however, that the growth in CLEC trunks at the tandem since 1996 has significantly contributed to the exhaust of Verizon's tandems.[20] Indeed, AT&T supported Verizon's position when it responded that Verizon could avoid the growing tandem exhaust problem by "proper forecasting, trunk rearrangements, and *deployment of additional tandem switching capacity*,"[21] a backhanded acknowledgement that increasing carrier demands on the tandems are requiring Verizon to expand and install new tandems to keep up.

Cox is also wrong in claiming that they presented "evidence concerning current engineering standards" that was contrary to Verizon's evidence.[22] To the contrary, neither Cox, nor any other CLEC, presented evidence relating to CLEC engineering standards.[23] Verizon, however, presented ample evidence of its own engineering standard calling for direct end office trunking when traffic reaches the DS-1 level.[24]

What Cox and AT&T want is to use Verizon's network, but free from the efficient trunking and routing standards that Verizon applies to its own traffic on that network. This position violates *Iowa Utilities Board v. Federal Communications Comm'n,*[25] which requires

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[19] Cox Opp. at 7; *see also* AT&T Opp. at 4-5.

[20] *See* Tr. at 1099 -1102, 1276-77; Verizon Ex. 4 at 37-39.

[21] AT&T Opp. at 5.

[22] *See* Cox. Opp. at 7.

[23] *See* Tr. at 1425, 1427-28.

[24] *See* Tr. at 1186-87; Verizon Ex. 4 at 37.

[25] 219 F.3d 744, 758 (8th Cir. 2000), *rev'd on other grounds, Verizon v. FCC,* 122 S.Ct. 1646, 1678

that ILECs are only required to provide interconnection that is equal in quality to that provided by the ILEC to itself.[26] Cox attempts to avoid *Iowa Utilities Board* by claiming that it refers to "blocking and other characteristics of transmission, not to locations of interconnection."[27] This is, again, the same red herring that Verizon's proposal somehow requires Cox to move its interconnection points. Indeed, a requirement to groom traffic into readily routed trunk groups is precisely about call "blocking and other characteristics of transmission."[28] Indeed, Verizon's direct end office trunking requirement is essential to Verizon's ability to maintain network integrity for all parties. Accordingly, *Iowa Utilities Board* is directly applicable to this issue and requires that the CLECs meet the same trunking standards Verizon imposes on its own use of its network.

2. WorldCom Confuses The Issue Relating To Financial Responsibility For Interconnection Facilities (Issue I-1) With A Network Engineering Issue.

WorldCom relies on the same POI location red herring. It claims that Verizon is attempting to re-litigate Issue I-1 by forcing WorldCom to establish POIs at each Verizon tandem. But the Petition does not ask WorldCom to establish any additional POIs. Instead, it asks the Bureau to clarify that when WorldCom hands off traffic at its single POI, it should hand it off configured in trunk groups directed to the proper end office consistent with the parties' DS-1 threshold agreement and, if that threshold is not yet met for traffic to a different tandem serving area, then to the appropriate tandem under the local exchange routing guide ("LERG"). Those

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(2002).

[26] *See id.* at 758.

[27] *See* Cox Opp. at 8.

[28] *See* Tr. at 1099-1100.

trunks can be established at a single POI at a single tandem without requiring the POI to move or multiply.[29]

WorldCom's language in Attachment IV § 1.3.1 would require Verizon to "terminate" WorldCom's traffic, *i.e.*, switch it, at a single tandem, regardless of where it is destined in the LATA.[30] This would force Verizon to switch much of WorldCom's traffic at **two** tandems (the wrong one and the right one), when no more than one is required for properly-routed traffic. This is a sure formula for premature and wasteful tandem exhaust and call blockage. Accordingly, WorldCom's position should be rejected.[31]

B. ISSUES IV-6, V-1, AND V-8: MEET POINT TRUNKING ARRANGEMENTS AND COMPETITIVE ACCESS SERVICES.

The Bureau should reconsider its *Order* to the extent it permits WorldCom to substitute UNEs for access service, contrary to the Act and contrary to the Commission's own precedent. WorldCom seeks these facilities not to interconnect with Verizon, but merely to transit strictly interexchange traffic across Verizon's network to and from interexchange carriers. This is classic access service and should be treated as such.[32]

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[29] *Order* ¶ 91. WorldCom witness Grieco understood this point at the hearing when he testified that WorldCom builds to a single POI, orders trunks from Verizon, and the trunks go from the POI to the final destination in the Verizon network (a tandem or end office location). *See* Tr. at 1633.

[30] For example, the parties' conformed agreement defines "termination" as the "compensation for the ***switching*** of section 251(b)(5) traffic . . . ." WorldCom-Verizon Conformed Contract, Interconnection Attachment § 7.1.1.4.2 (emphasis added).

[31] Contrary to WorldCom's suggestion, Verizon raised its concern with this language at the hearing and in its post-hearing brief. *See* Tr. 1464-65; Verizon Post-Hearing Br. at 31-32. WorldCom cannot claim surprise. Indeed, Verizon is seeking clarification from the Bureau because it addressed Verizon's concerns in the *Order*. *See Order* ¶ 91.

[32] *See* Petition at 11-15.

WorldCom insists that it can use dedicated transport, a UNE, to provide an access service despite the specific statutory prohibition in § 251(g) against providing "exchange access" services under the interconnection provisions of § 251. If § 251(g) is to have any meaning, however, it must apply here, where WorldCom concedes that it intends to use the facilities solely to provide "access services to interexchange carriers."[33] If WorldCom used its own facility to interconnect with the IXC, it would recover the cost of that facility in the access charge it assesses on the IXC. WorldCom fails to offer any persuasive rationale why the result should be different when WorldCom chooses to use Verizon's exchange access service. WorldCom does not deny that it can recover any payment to Verizon for that interexchange service by assessing an access charge on the IXC. Nor does WorldCom attempt to dispute that its proposal to use UNEs for the provision of access services will "undercut the market position of many facilities-based competitive access providers."[34]

This situation is little different from the substitution of UNE loops and dedicated transport for special access facilities, an arbitrage at conflict with section 251(g) that the Commission has properly restricted to situations in which the facility is being used predominantly for the provision of local exchange service."[35] In fact, the Commission there expressly held that it could *not* find based on the record before it that requesting carriers were impaired without access to the incumbent's loops and dedicated transport facilities at UNE rates solely to provide access services. And it recognized that an impairment finding was a statutory

[33] WorldCom Opp. at 12.

[34] *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Supplemental Order Clarification, 15 FCC Rcd 9587 ¶¶ 14-15, 18 (2000).

[35] *Id.* ¶ 22.

pre-requisite *before* it could require access to those facilities at UNE rates to substitute for traditional access services. As a result, it held that requesting carriers could not use an incumbent's loops and transport facilities solely to provide access pending further examination of the issue in the ongoing *Triennial Review* proceeding. In the interim, requesting carriers could only obtain access to the incumbent's facilities as UNEs where they could demonstrate they would be used predominantly to provide local service. Here, however, there is no question of any predominant, or even substantial, use of these facilities for local service – WorldCom admits that it will use these facilities *solely* to provide interexchange service.[36] Accordingly, it should not be allowed to undercut these access services by substituting UNEs.

Finally, WorldCom's attempt to distinguish *Mountain Communications* fails to grapple with the relevant portion of that decision. In *Mountain Communications*, the dedicated toll facilities were "not necessary for interconnection"[37] with the ILEC, and thus, under § 251(d)(2)(A), Qwest was not required to offer those facilities as UNEs. Similarly, WorldCom seeks these facilities not to interconnect with Verizon, but solely to transit its network in order to provide access services to other carriers. This is a function that WorldCom could provide by connecting its switch directly with IXCs to exchange toll traffic. Therefore, neither the Act nor the Commission's rules require Verizon to make these facilities available as UNEs under § 251.

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[36] WorldCom Opp. at 12.

[37] *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, File No. EB-00-MD-017, 2002 WL 1677642, ¶ 6 (rel. July 25, 2002) ("*Mountain Communications*"), *aff'g*, *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, File No. EB-00-MD-017, Mem. Op. and Order, 17 FCC Rcd 2091 (2002).

The same analysis discussed above compels reconsideration or clarification of the Bureau's resolution of Issues V-1 and V-8 with AT&T.[38] Since AT&T did not respond, Verizon relies on the arguments submitted in its Petition.

II. <u>INTERCARRIER COMPENSATION</u>

A. ISSUE I-6: TOLL RATING AND VIRTUAL FOREIGN EXCHANGES.

The *Order* requires Verizon to pay reciprocal compensation for Virtual FX calls. Such calls are, by definition, interexchange or "toll" calls – *i.e.*, they originate in one local calling area and terminate in another – and, as the Commission has repeatedly held, Verizon is entitled to collect toll charges on these calls. And, as the Commission also has held, if another carrier chooses to provide its service in such a way as to deny Verizon the ability to assess toll charges on its customers, then that other carrier is receiving a toll service for which it must compensate Verizon. The terminating carrier therefore must pay Verizon for the toll service it provides (less any applicable exchange access charge for terminating the interexchange call if the toll charge that applies is one that includes such access). Because this traffic is subject to the pre-existing rules that apply to toll traffic, however, reciprocal compensation does not (and cannot) apply.

The Bureau reached its erroneous decision solely because it concluded that "rating calls by their geographical starting and ending points raises billing and technical issues that have no concrete, workable solutions at this time."[39] As Verizon explained in its Petition, that conclusion is inaccurate. A traffic study similar to the studies that are routinely used in other situations can

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[38] Moreover, AT&T's proposed interconnection agreement § 6.2.1 conflicts with language proposed by AT&T and approved by the Bureau in AT&T's Schedule 4, Part B § 1.3. Thus AT&T specifically agreed to compensate Verizon for these trunks at the rate set forth in Verizon's applicable tariff.

[39] *Order* ¶ *301*.

readily be used to exclude Virtual FX calls from reciprocal compensation, and thus comply with the Commission's rules. Accordingly, Verizon asked the Bureau to reconsider its decision. Verizon also asked the Bureau to clarify that its Order does not overrule other binding orders of the full Commission.

1. The Bureau Should Clarify That It Did Not Intend To Overrule Other Commission Orders.

There is no dispute that the Bureau's *Order* does not overrule the *ISP Remand Order*. As WorldCom notes, "no party contends that, in the *Order*, the Arbitrator purported to overrule or alter the *ISP Remand Order*.[40] The Bureau should therefore clarify its Order as Verizon requested.

The Petitioners similarly argue that the Bureau's *Order* does not overrule the decision of the Enforcement Bureau in the *Mountain Order*, subsequently affirmed by the Commission's unanimous decision in *Mountain Communications.*[41] The Petitioners do, however, try to distinguish the Commission's decision from the facts in this case, noting, for example, that *Mountain Communications* involved a paging carrier that had purchased T-1 facilities.[42]

The Virtual FX service at issue in this proceeding, however, involves the same sort of

[40] WorldCom Opp. at 20. Cox agrees that "nothing in the Arbitration Order even suggests such a result." Cox Opp. at 10. AT&T's position is a little less clear. It claims, for example, that "as the law now stands, even to the extent FX-like services are offered to ISPs, ... – the Act's reciprocal compensation obligations apply." AT&T Opp. at 8. That statement is perhaps inartfully worded, but to the extent it is not, it represents a misunderstanding of the *ISP Remand Order*, not the Bureau's *Order*. In a footnote, however, AT&T recognizes that competitive LECs are only entitled to compensation under "the Commission's current, interim compensation rules for ISP-bound traffic," not reciprocal compensation. *Id.* at n.9.

[41] *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 2091, 2096 (Enf. Bur. 2002) (*"Mountain Order"*), *affirmed,* Order on Review, FCC 02-220, rel. July 25, 2002 (*"Mountain Communications"*).

[42] AT&T Opp. at 9; WorldCom Opp. at 20-21; Cox Opp. at 10-12.

arrangement at issue in *Mountain Communications* – in both instances, carriers have configured their networks so that callers in distant locations can reach their customers without having to pay toll charges. In *Mountain Communications,* the Commission held that "[b]y configuring its interconnection arrangement in this manner, Mountain prevents Qwest from charging its customers for what would ordinarily be toll calls to access Mountain's network. Accordingly, Mountain has received a wide area calling arrangement for which it must compensate Qwest."[43] The result should be the same in this case. As the Commission pointed out in *Mountain Communications,* "wide area calling allows a paging carrier to subsidize the cost of calls from a LEC's customers to the paging carrier's customers, when the LEC must complete those calls by transporting the calls from one local calling area to another. A reverse billing arrangement is *only one of several types* of wide area calling services ...."[44] The Virtual FX service at issue in this case is nothing more than another type of wide area calling service.[45] And, just as in *Mountain Communications*, the Petitioners should compensate Verizon for the wide area calling service it provides to Petitioners. The Bureau should clarify that it did not, indeed could not, overrule *Mountain Communications* in this regard.

2. The Bureau's Decision That Virtual FX Traffic Is Subject To Reciprocal Compensation is Contrary To The Commission's Rules.

Verizon has also asked the Bureau to reconsider its decision to the extent it requires

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[43] *Mountain Communications* at ¶ 5.

[44] *Id.* (emphasis in the original.)

[45] AT&T and WorldCom claim that a different result is required here because the cost to Verizon of completing a virtual FX call is the same as the cost of completing a local call. AT&T Opp. at 9-10; WorldCom Opp. at 21. As *Mountain Communications* makes clear, however, that is not the issue. Mountain was required to compensate Qwest, not because it was increasing Qwest's costs, but because it was preventing Qwest from receiving toll *revenues* from its customers, just as Virtual FX service prevents Verizon from receiving toll revenues from its customers.

Verizon to pay reciprocal compensation for Virtual FX calls. By definition, these are calls that Verizon hands off to Petitioners outside the originating local calling area and that they deliver to customers outside the originating local calling area. Such calls by definition are interexchange or "toll" calls on which Verizon is entitled to recover toll charges, in this case from the carrier who receives (and is the beneficiary of) the toll service, less any applicable exchange access charges on the terminating end (if the toll charge is one that includes such access). These calls, therefore, are excluded from reciprocal compensation pursuant to the Commission's Rule 51.701(b)(1).

The Petitioners assert, however, that Virtual FX calls are local calls. WorldCom, for example, claims that "Verizon asks the Arbitrator to exempt a category of 'local' calls from the requirements of § 251(b)(5) of the Act."[46] Similarly, Cox claims that "Verizon's argument assumes a key conclusion – that virtual FX traffic is, in fact, toll traffic – without citing a single case or even a single line of testimony to support that claim."[47] These claims are without merit. There is no question that Virtual FX calls originate in one local calling area and terminate in another. And there is no question that Verizon would be entitled to charge its customers an extra fee for what would ordinarily be toll calls. *Mountain Communications*, moreover, itself confirms, as did the previous Commission decisions it applied, that such calls "would ordinarily be toll calls" but for the fact the Virtual FX arrangement prevents Verizon from billing them as such.[48]

Petitioners next claim that such calls are not exempt from reciprocal compensation under §251 (g) of the Act. WorldCom, for example, claims that "the D.C. Circuit has squarely

[46] WorldCom Opp. at 17-18.

[47] Cox Opp. at 13.

foreclosed the argument that § 251(g) justifies the refusal to pay reciprocal compensation for calls handled by two local exchange carriers that, by virtue of the NPA-NXX of the calls, have been deemed 'local' by the Commission."[49] The principles the Commission established in *Mountain Communications*, however, demonstrate that with Virtual FX service, Verizon is acting as an interexchange carrier, providing a toll (or interexchange) service to the interconnecting carrier. And because they are interexchange access calls on which Verizon is entitled to toll charges from the benefiting carrier, and are subject to the pre-existing rules that apply to toll calls, they are exempt from reciprocal compensation under § 251(g) of the Act and §51.702(b)(1) of the Commission's rules.[50]

WorldCom's statement, moreover, reveals that it does not really believe that Virtual FX calls are local, only that they have been "deemed" local because the Bureau required carriers to use "the current system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes."[51] As Verizon explained in its Petition, however, that "current" system is only used to rate calls to end-users. For purposes of intercarrier compensation, the Commission has specifically considered and rejected the use of assigned NPA-NXX codes, and instead used the actual geographic end points of the calls.[52] In that case, the fact that the calling

[48] *Mountain Communications* at ¶ 5.

[49] WorldCom Opp. at 19, citing *WorldCom, Inc. v. FCC*, 288 F.3d 429, (D.C. Cir. 2002).

[50] For the same reason, Virtual FX calls to ISPs are also not subject to the intercarrier compensation regime established in the *ISP Remand Order*. It is not true, as WorldCom asserts, that "pursuant to the *ISP Remand Order*, *all* traffic delivered to an ISP is entitled to the compensation set forth in that Order. WorldCom Opp. at 22. If a Verizon customer makes a toll call to an ISP served by WorldCom, no one claims that reciprocal compensation or intercarrier compensation would apply, or that Verizon could not charge its customer for the toll call. The *ISP Remand* Order did not change that.

[51] Order at ¶ 301.

[52] *AT&T Corp. v. Bell Atlantic-Pennsylvania*, 14 FCC Rcd 556, 587, ¶ 71 (1998) ("*AT&T v. BA-*

party and the called party were assigned NPA-NXX codes in the same local calling area was totally irrelevant to the proper treatment of the call for intercarrier compensation purposes. The Petitioners' attempts to distinguish *AT&T Corp. v. Bell Atlantic-Pennsylvania*, moreover, do not, indeed cannot, refute this basic finding of the case.[53]

The Bureau, however, erroneously concluded that "rating calls by their geographical starting and ending points raises billing and technical issues that have no concrete, workable solution at this time."[54] That may be true for billing end-users. It is not true, however, for intercarrier compensation purposes. A common method for solving the billing and technical questions is to employ traffic studies, and they are used in a variety of intercarrier compensation situations. For example, carriers have long relied on traffic studies to determine factors for the relative use of network facilities that carry both interstate and intrastate traffic (known as "percent interstate use" or "PIU" factors). They also have relied on traffic studies to determine factors for the relative percentage of local and access traffic in their interconnection arrangements (known as "percent local use" or "PLU" factors). In this case, the Bureau itself expressly endorsed the development of factors for use in applying the 3:1 ratio established by the *ISP Intercarrier Compensation Order*, and to exclude exchange access and toll traffic that is not subject to reciprocal compensation.[55]

There is no reason the parties cannot develop similar factors to apply to Virtual FX traffic as well. Indeed, the declaration of William Munsell attached to Verizon's Petition demonstrates

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PA"), *reconsideration denied*, 15 FCC Rcd 7467 (2000).

[53] *See* WorldCom Opp. at 19-20; Cox Opp. at 14.

[54] Order at ¶ 301.

[55] *Order* ¶¶ 266, 269, 274.

that such a process could readily be implemented. The Petitioners, of course, have no interest in doing so, and that explains why they are so vehemently attempting to exclude Mr. Munsell's affidavit. That affidavit, however, should not be excluded for the reasons set forth in Verizon's Opposition to Cox's Motion to Strike, also being filed today. Most important, the Petitioners' unwillingness to cooperate should not stand in the Bureau's way of deciding this issue in a way that is consistent with the Commission's rules.

Accordingly, the Bureau should reconsider its *Order* and hold that Virtual FX traffic is not subject to reciprocal compensation, and it should direct the parties to develop an appropriate factor to exclude such traffic from reciprocal compensation payments.

B. ISSUE III-5: TANDEM SWITCHING RATE.

The Commission's rule provides that a carrier is entitled to charge the higher tandem switching rate if its switch "**serves** a geographic area comparable to the area served by the incumbent LEC's tandem switch."[56] The Commission has confirmed, however, that the carrier must "demonstrate" that its switch serves such a comparable geographic area.[57]

AT&T and WorldCom insist that the Bureau was correct in holding that, under this rule, they need only demonstrate that their switches are "capable" of serving the comparable geographic area.[58] As Verizon explained in its Petition, however, that cannot be what the Commission intended because that is no demonstration at all. Any switch is **capable** of serving a comparable geographic area. The loop/transport facilities to end-users determine the

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[56] 47 C.F.R. § 51.711(a)(3) (emphasis added).

[57] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC No. 01-132, Notice of Proposed Rulemaking ¶ 105 (rel. April 27, 2001). (*"Intercarrier Compensation NPRM").*

geographic reach, not the switch itself.[59] Demonstrating that a switch is "capable" of serving a large area is therefore a meaningless exercise, and cannot be consistent with the Commission's rule.

In adopting the rule, the Commission was responding to the argument that a competing carrier might choose a network architecture different than the incumbent LEC's, and rely on fewer switches and more transport. The carrier would thus avoid having to switch calls twice, as incumbent LECs do at their tandem and end office switches, but it would incur higher transport costs to connect its switch to customers in multiple rate centers. The Commission therefore directed the states to:

> consider whether new technologies (e.g., fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch and thus, whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch. Where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate.[60]

This rationale for the Commission's rule, therefore, only applies if the competing carriers are in fact serving a large geographic area. If they are not, and are merely "capable" of serving a large area, there is no basis to allow them to collect the higher tandem switching rate. They would simply be receiving a gratuitous subsidy payment, and that obviously cannot be what the Commission intended.

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[58] AT&T Opposition at 10-11; WorldCom Opposition at 23-27. *See also Order* at ¶ 309.

[59] WorldCom even acknowledges this fact: "the geographic area served by a competing carrier's switch is a function of the network utilized by that carrier." WorldCom Opposition at 25.

[60] *In re Implementation of the Local Competition Provision in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 at ¶ 1090 (1996). ("*Local Competition Order*")

AT&T and WorldCom, however, assert that the rule does not require them to demonstrate that they are actually serving customers in a comparable geographic area.[61] In support of this assertion, both make the same curious argument, and one that suggests that neither could satisfy the rule. AT&T, for example, claims that if the rule required a carrier to demonstrate that it was serving a large geographic area, it would penalize new entrants "because they would not yet have had sufficient time to build their customer bases to be 'comparable' to the size and scope of the ILEC's."[62] Similarly, WorldCom claims that "making a geographically dispersed customer base a prerequisite for obtaining tandem interconnection rates would seriously burden new entrants."[63] The only logical conclusion to be drawn from these statements is that neither AT&T nor WorldCom is serving customers in a large geographical area, even though their switches might be "capable" of doing so. The rule, moreover, does not say that CLECs are entitled to the tandem rate because their switches might **someday** serve a comparable geographic area.

WorldCom goes on to argue that "the geographic area served by a competing carrier's switch is a function of the network utilized by that carrier, not the location of its actual customers." The first part of this statement is correct, and it precisely Verizon's point, discussed above. The geographic area served by a switch is a function of the network, not the switch, because any switch is **capable** of serving a large area. The second part of WorldCom's statement, however, is just wrong. Indeed, WorldCom seems to be saying that its switch "serves" an area even where no "actual customers" are located. That would only be true if WorldCom has built networks to locations where it has no customers, which is exceedingly

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[61] AT&T Opposition at 12; WorldCom Opposition at 24.

[62] AT&T Opposition at 12-13.

unlikely.

Both AT&T and WorldCom next claim that a rule requiring them to demonstrate that their switches serve a comparable geographic area is not practical, and fault Verizon for not proposing "a specific test for establishing a 'geographically dispersed customer base.'"[64] The Commission, however, instructed the CLECs to make the demonstration, not Verizon. And the Commission did not require Verizon to demonstrate that they are **not** serving a comparable geographic area. It is no answer for the Petitioners to say that even though they do not know how to satisfy the Commission's rule, they are nonetheless entitled to the tandem switching rate.

The Bureau's *Order* allows AT&T and WorldCom to charge Verizon the higher tandem switching rate regardless of the costs they incur in terminating Verizon's traffic. While their switches may be capable of serving a large geographic area, if they are not actually serving customers in that area, then they will not incur the added costs associated with tandem switching. Allowing them to collect the higher tandem rate in those situations, therefore, would provide an inappropriate windfall, and is inconsistent with the Commission's rule.[65]

In contrast, the Commission's rule requiring requesting carriers to demonstrate that they are serving customers in a broad area is affirmatively pro-competitive. It preserves the incentive carriers have to extend the reach of their switches to more customers. The Petitioners' interpretation of the rule, by contrast, undermines that incentive by allowing them to collect the higher tandem rate without making any additional investment.

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[63] WorldCom Opposition at 25.

[64] AT&T Opposition at 13; WorldCom Opposition at 25-26.

[65] In the *Local Competition Order* (¶ 1085, 1090), the Commission stated that in situations where the CLEC incurs "additional costs of transport and termination," it would be appropriate to allow the CLEC

The Bureau should therefore grant Verizon's petition and not allow the Petitioners to collect the higher tandem switching rate simply because their switches are capable of serving a geographic area comparable to the area served by Verizon's tandem switches.

III. UNBUNDLED NETWORK ELEMENTS

A. ISSUE III-10: LINE SHARING AND LINE SPLITTING.

The Bureau allowed AT&T to use its own tools to pre-qualify loops for line splitting, claiming that it was "adopting the same ruling as the New York Commission."[66] As Verizon explained in its Petition, however, the New York Commission did not approve AT&T's proposal because "Verizon would have to modify its system that other CLECs also use, and the company would incur added expenses. [The New York Commission] find[s] that the prevailing system that has been designed for all carriers is adequate."[67]

The Bureau, however, agreed with the New York Commission's observation that "to the extent that it is technically feasible to modify the requisite systems to accommodate both AT&T's needs and those of the other CLECs, **and if AT&T is willing to pay for the modifications**, Verizon should make them."[68] The problem is that AT&T's language, that the Bureau adopted, does not require AT&T to pay for the necessary modifications. AT&T's

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to use the ILEC's tandem rate as a presumptive proxy for the recovery of such costs.

[66] Order at ¶ 398, n.1311.

[67] *See Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc.*, Case No. 01-C-0095, Order Resolving Arbitration Issues (rel. July 30, 2001) at 55. *("NY (AT&T/Verizon) Arbitration Order")*.

[68] *Id.* (emphasis added.)

Opposition does not even address this flaw in its language.[69] Moreover, AT&T has demonstrated that it is not willing to pay for the necessary modifications.

First, AT&T claims, despite the New York Commission's finding to the contrary, that "no system modifications are necessary."[70] It claims that "when a CLEC submits an order for line splitting (or line sharing), it indicates whether it has or has not prequalified the loop, by checking a box on the existing form."[71] Checking that box, however, indicates that the CLEC has qualified the loop using **Verizon's qualification database,** which is the only tool used by all other CLECs. If AT&T is permitted to use its own tools, Verizon will need to modify its systems to allow AT&T to check another box, to accept such orders, and to be able to track whether AT&T's tools were used.[72] That is required because the Bureau made it clear that "if AT&T uses a non-Verizon loop pre-qualification tool for line splitting, it should not hold Verizon responsible for the service performance of that loop."[73]

Second, AT&T has clearly indicated that it is not willing to pay for the necessary modifications by disputing contract language that would require it to do so.[74] Instead, AT&T proposes language that would only require it to pay for modifications if AT&T requests that

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[69] In its opposition, AT&T claims that Verizon ignores the testimony of its witnesses. AT&T Opposition at 14. The testimony it cites, however, merely acknowledges that Verizon would make the modifications to the extent they are technically feasible, and AT&T will commit to paying for them. It does not agree to allow AT&T to use its own qualification tools without meeting those conditions.

[70] AT&T Opposition at 15.

[71] *Id.*

[72] Verizon's Petition explains some of the additional modifications that would be required. *See* Verizon Petition, at pp. 27-28. AT&T does not even mention these modifications in its Opposition, much less explain why they would not be required.

[73] Order at ¶ 398.

[74] *See* Verizon's Arguments in Support of Disputed Language, filed September 17, 2002, at 5-7.

Verizon make them. Given that AT&T asserts that no modifications are necessary, it will not request any, and thus claim it need not pay for them. In its Opposition, AT&T attempts to avoid any discussion of whether it would pay for the necessary modifications, relying on the Bureau's expectation "that the determinations of technical feasibility and cost will be made in New York."[75] As Verizon has explained, however, Verizon's tariff in New York does not allow AT&T to use its own tools, so the New York Commission will not be addressing these issues.[76]

The Bureau should therefore reconsider its decision allowing AT&T to use its own tools to pre-qualify loops for line splitting. If it does allow AT&T to use those tools, however, it should adopt contract language that clearly requires AT&T to pay for the necessary modifications to Verizon's systems -- as the New York Commission did.

Verizon raised another line sharing issue related to collocation augment intervals. Verizon asked the Bureau to "adopt contract language that incorporates the intervals established by the New York Carrier to Carrier Working Group."[77] AT&T appears to agree with this requested clarification.[78] AT&T's proposed language reflecting this agreement, however, needs to be clarified. AT&T proposes to add "or such other period as may be called for pursuant to processes established by the New York Collaborative." To be clear, the parties should add "or such other period developed within the Carrier to Carrier Working Group of the New York Collaborative (NY Case 97-C-0139)."

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[75] AT&T Opposition at 15.

[76] *See* Verizon's Arguments in Support of Disputed Language, filed September 17, 2002, at 8-9.

[77] Verizon Petition at 29.

[78] AT&T Opposition at 15, n.13.

B. ISSUE III-12: DARK FIBER.

1. Verizon Properly Addressed the Issue of its Right to Recover Costs Associated With The CLECs' Reservation of Fiber

The *Order* allows AT&T, within ten business days of its receipt of confirmation that requested dark fiber IOF is available, to reserve such dark fiber IOF for ninety days, and also requires Verizon to hold dark fiber for WorldCom for ten business days after WorldCom's receipt of confirmation from Verizon that the requested dark fiber is available.[79] The *Order* is silent, however, about what AT&T and WorldCom should pay for the dark fiber during these periods. Verizon therefore requested that the Bureau clarify that Verizon may implement both a recurring and a non-recurring charge for these services.

AT&T opposes paying any recurring charges,[80] but "does not object as a matter of principle to an appropriate level of recovery by Verizon of its OSS development costs that are necessitated by the unbundling requirements of the Act."[81] WorldCom, by contrast, opposes a non-recurring charge, but does not mention recurring charges.[82] Neither provides any legitimate basis for rejecting Verizon's requested clarification.

AT&T argues that allowing Verizon to charge for reserving dark fiber would be discriminatory because it would impose on AT&T costs that Verizon does not have to bear. According to AT&T, "[w]hile Verizon claims that it has incurred the costs 'paid to install the fiber,' these are not incremental costs arising out of the reservation of fiber, but rather sunk costs that Verizon incurred in the past and that do not change regardless of whether Verizon itself or

[79] *Order* at ¶¶ 460-461.

[80] AT&T Opposition at 15.

[81] AT&T Opposition at 17.

AT&T reserves the fiber for a customer."[83] This argument is absurd. The costs Verizon incurred to install all of its facilities are "sunk," but that does not mean that AT&T is entitled to use those facilities for free. AT&T does not dispute that it must pay for dark fiber after the reservation period, whether or not AT&T is actually using it to provide service. There is no logic to suggest that it should not also pay for the dark fiber when it is reserved for AT&T's use. It is dedicated to AT&T's use to the same degree, and similarly not available for use by Verizon or any other CLEC. The Bureau justified its decision to allow the reservation of dark fiber on the theory that it would put the Petitioners "on a more equal footing with Verizon."[84] That would certainly not be true, however, if the Petitioners were permitted to appropriate Verizon's dark fiber for their own needs without paying for it.

AT&T is similarly wrong in suggesting that Verizon is seeking to recover an "opportunity" cost.[85] According to AT&T, "Verizon has not demonstrated that it would suffer any real harm as a result of the reservation policy mandated by the *Order*."[86] That, of course, is not the law. Verizon is not required to demonstrate it will be harmed before it may charge for providing unbundled network elements to CLECs. The Commission has long recognized Verizon's right to be "fully compensated for any efforts [it] makes to *increase the quality of access* or elements within [its] own network."[87]

For its part, WorldCom makes no substantive argument in opposing Verizon's Petition.

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[82] WorldCom Opposition at 27-28.

[83] AT&T Opposition at 15.

[84] *Order* at ¶ 460.

[85] AT&T Opposition at 16.

[86] *Id.*

Instead, it simply claims that Verizon should have raised the issue of a charge for reserving dark fiber earlier. Verizon did not know, however, that it would be required to allow the reservation of dark fiber until the Bureau issued its *Order*, and certainly did not know what the parameters of the rule would be. Moreover, as the record unequivocally shows, Verizon does not reserve dark fiber for itself.[88] Therefore, the 10-day and 90-day dark fiber reservation periods created by the Bureau in this proceeding amount to new wholesale products. As a result, Verizon must modify its systems to allow ordering, provisioning and billing of these new products. The Act and the Commission's rules require that Verizon be allowed to recover its costs of providing that service, and the Bureau should clarify its *Order* accordingly.

C. ISSUE IV-14: DEFINITIONS AND OPERATIONAL TERMS (SPECTRUM MANAGEMENT).

The Bureau's *Order* adopted WorldCom's language that provides for the development of spectrum management procedures to the extent they do not yet exist.[89] Verizon asked the Bureau to reconsider this decision because the Commission has already assigned that task to the National Reliability and Interoperability Council ("NRIC"), an existing Federal Advisory Committee.[90] WorldCom's opposition to this request is without merit.

WorldCom erroneously suggests that Verizon has somehow waived its right to seek reconsideration of the Bureau's decision.[91] As WorldCom admits, however, Verizon has

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[87] *Local Competition Order* ¶ 314 (emphasis added).

[88] *See* Verizon's Post Hearing Brief on Non-Cost Issues, at 58.

[89] *Order* at ¶ 481.

[90] Verizon Petition at 33, citing the *Line Sharing Order* ¶¶ 183-91.

[91] WorldCom Opp. at 28.

disputed inclusion of WorldCom's proposed §§ 4.2.11 and 4.2.11.1 throughout this proceeding, recognizing that the change in applicable law provisions address WorldCom's concerns.[92]

WorldCom acknowledges the NRIC's involvement in developing industry-wide spectrum management rules, but laments the slow progress.[93] It therefore claims it is reasonable to require Verizon to develop spectrum management rules independently of the NRIC, and presumably in advance. There is no basis, however, to require Verizon to undertake a duplicative process.

This is especially true because WorldCom admits to seeking special treatment: "WorldCom and Verizon need not take into account the nature of other incumbent carriers' and competing carriers' networks and advanced services deployment, and other factors that the industry bodies must consider when adopting nationwide spectrum management policies."[94] Verizon should not, however, be required to implement a special spectrum management policy solely for WorldCom. Moreover, if such policies should be network dependent, as WorldCom seems to suggest, WorldCom would gain an unfair advantage over all other CLECs that have appropriately participated with the industry bodies and NRIC to whom these tasks have been delegated.

WorldCom also states that acceptance of Verizon's proposal "would indefinitely postpone WorldCom's ability to offer advanced services."[95] There is no record evidence supporting this claim. WorldCom is able to offer advanced services under Verizon's proposed

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[92] WorldCom Opp. at 29.

[93] WorldCom Opp. at 31.

[94] WorldCom Opp. at 32.

[95] WorldCom Opp. at 31.

contract language in the same manner as every other CLEC subject to the terms of Verizon's contract language.

WorldCom states that nothing in the *Line Sharing Order* prohibits establishing such procedures through the arbitration of interconnection agreements.[96] It is equally true, however, that nothing in the *Line Sharing Order* suggests that arbitrations are the appropriate forum for developing such procedures. Indeed, that notion is belied by the statements of the Commission itself.[97] One wonders why the Commission would have assigned this task to industry bodies if carriers were supposed to develop these procedures during arbitrations. In any event, the Bureau should allow the parties to continue to work with the industry bodies and the NRIC to develop industry-wide spectrum management procedures, and should not require Verizon to incur additional expense solely on WorldCom's behalf.

IV. BUSINESS PROCESS REQUIREMENTS

A. ISSUE IV-74: BILLING PROCEDURES.

WorldCom has agreed to support Verizon's request that the providing party must transmit all invoices to the purchasing party within ten *business* days after the bill date. WorldCom Opp. at 33. Consequently, the Bureau should order the Parties' agreement to reflect this provision.

V. GENERAL TERMS AND CONDITIONS

A. ISSUE VI-1(N): ASSURANCE OF PAYMENT.

The $100 million net worth exception is unworkable, and would effectively gut the payment assurance provisions that the Bureau rightly ordered shall apply to WorldCom. Among other things, given WorldCom's endemic accounting irregularities, Verizon does not have an

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[96] *Id.* at 31.

effective means by which to accurately calculate WorldCom's net worth. Even assuming those irregularities are eventually corrected, because net worth statements can include goodwill and other intangible items, net worth alone is not a reliable indicator of a carrier's ability to pay its bills on time, as many unfortunate creditors have learned over the past year. For this reason, in most bankruptcy proceedings, including the WorldCom bankruptcy, and for most credit rating agencies, creditors and financial analysts are primarily interested in statements of available cash, not net worth. In that context, it is understood that even companies with substantial statements of net worth may simply not be generating enough cash flow to pay their bills on time. For this reason, Verizon's proposed language focuses on the overall creditworthiness of WorldCom -- which can be obtained by reference to established credit rating agencies -- and the empirical facts available to Verizon; namely, WorldCom's payment history.

If the Commission nevertheless should decide that WorldCom's net worth, should circumscribe Verizon's reliance on more appropriate financial indicia, a $100 million carve-out is nonetheless inappropriate, as it is grossly low – effectively providing Verizon with little (if any) protection in the case of a future bankruptcy by WorldCom or others who opt into its agreement. A company with a mere $100 million net worth that develops cash flow problems sufficient to cause it to miss payment of its monthly bills is almost certainly not going to have sufficient hard assets to cover these types of debt being incurred with Verizon in the present market, where distressed telecommunications assets are being sold for pennies on the dollar. WorldCom, for example, incurs more than $10 million per month in Verizon billed charges. With just three months of nonpayment, WorldCom could run up a debt to *Verizon alone* of $42

[97] *See* Petition at 32-34.

million, almost *half* the total net worth requirement proposed by the Commission. Although Verizon believes that there is no such thing as a reliable net worth requirement, any figure short of $1 billion is virtually meaningless.

WorldCom, in contrast, makes what under the circumstances can only be described as an incredible claim that the payment assurance "provision should be deleted from the agreement in its entirety."[98] WorldCom previously argued that assurance of payments terms were inappropriate as applied to it because of its financial stability.[99] WorldCom now argues that assurance of payment terms should not be included in the agreement because WorldCom's current bankruptcy proceeding will resolve the amount and form of payment assurance that WorldCom must provide. WorldCom is wrong.

Although the bankruptcy court may determine what assurances WorldCom must provide to its creditors during the pendency of the bankruptcy, the interconnection agreement that will be executed following this arbitration almost certainly will extend for periods well beyond (and likely a couple or more years after) the end of the bankruptcy proceeding. Therefore, unless WorldCom now intends to go out of business completely, Verizon's assurance of payment language must be included in the agreement to govern the parties' business dealings after the bankruptcy proceeding is concluded. In addition, even if the end dates of the bankruptcy proceeding and the parties' agreement were identical, Verizon should not be foreclosed in this

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[98] WorldCom Opp. at 35, 36.

[99] Direct Testimony of John Trofimuk, Matt Harthun and Lisa Roscoe at p. 62 (August 17, 2001) ("There is no real danger that WorldCom's ability to pay will suddenly be so adversely affected that Verizon would be justified in suspending service.").

proceeding from obtaining what the Bureau determined was Verizon's "legitimate business interest in receiving assurances of payment . . . from its competitive LEC customers."[100]

Contrary to WorldCom's assertion, the letter previously offered by Verizon to WorldCom did ***not*** propose to exempt WorldCom from the assurance of payment requirements under the agreement.[101] Rather, Verizon was willing to provide a letter stating that, *as of the date of execution of the agreement*, Verizon was not aware of any circumstances that would necessitate assurance of payment from WorldCom under § 6.2.[102] Obviously, it would be a gross understatement to say that the circumstances upon which that letter was predicated have changed dramatically. Therefore, if the Bureau truly adopted the $100 million net worth exemption based on the terms of the letter as WorldCom asserts,[103] it is clear that the Bureau should strike the exemption from the agreement.

Respectfully submitted,

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[100] *Non-Cost Order* at ¶ 727.

[101] WorldCom Opp. at 36.

[102] Rebuttal Testimony of Christos Antoniou, *et al*, on General Terms and Conditions Issues at p. 26 (September 5, 2001).

[103] WorldCom Opp. at 36.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of *Petition of WorldCom, Inc. Pursuant* **to Section 252(e)(5) of the Communications Act for Expedited Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration**	)	**CC Docket No. 00-218**
In the Matter of Petition of Cox Virginia Telecom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon *Virginia Inc. and for Arbitration*	)	**CC Docket No. 00-249**
In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc.	)	**CC Docket No. 00-251**

VERIZON'S MOTION SEEKING LEAVE TO EXCEED PAGE LIMIT FOR REPLY TO OPPOSITION TO VERIZON'S PETITION FOR CLARIFICATION AND RECONSIDERATION

Verizon Virginia Inc. ("Verizon") seeks leave to exceed the 10-page limit applicable to a reply to opposition to a petition for reconsideration pursuant to 47 C.F.R. § 1.106(h). Like Verizon's Petition for Clarification and Reconsideration of the Wireline Competition Bureau's July 17, 2002 Memorandum Opinion and Order, Verizon replies to multiple parties on numerous and complex issues. Rather than repeat its arguments in three separate replies, Verizon submits one reply to all the carriers on all the issues. If the arbitrations had not been consolidated, Rule 1.101(h) would have permitted Verizon 10 pages to present its reply relative to each opposing carrier. Verizon's request is reasonable and will cause no prejudice to Petitioners.

WHEREFORE, Verizon respectfully requests that it be permitted to exceed the 10-page limit and that its accompanying Reply to Opposition To Verizon's Petition for Clarification and Reconsideration of July 17, 2002 Memorandum Opinion and Order be accepted for filing and considered on its merits.

Respectfully submitted,

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration	))))))))))	CC Docket No. 00-249

VERIZON'S OPPOSITION TO COX'S MOTION TO STRIKE

In its Motion to Strike,[1] Cox Virginia Telcom, Inc. ("Cox") suggests that by exercising rights and options specifically provided in the Commission's rules, Verizon Virginia Inc. ("Verizon") has violated Cox's "due process rights" and should be assessed a forfeiture."[2] Cox apparently hopes that, by opening this meritless sideshow, it will prevent the Wireline Competition Bureau's ("Bureau's") informed reconsideration of the issues, including Issue I-6 (Toll Rating and Virtual Foreign Exchanges). Because the Commission's rules specifically contemplate both Verizon's Petition for Clarification and Reconsideration ("Verizon's Petition")[3] and Verizon's limited factual submission,[4] the Bureau should deny the Cox Motion to Strike. Its suggestion of sanctions for proper behavior deserves even shorter shrift.

The Bureau's conclusion on the virtual foreign exchange issue was based on its mistaken conclusion that "Verizon ... offered no viable alternative to the current system" and that "rating

[1] Cox Motion to Strike the Declaration of William Munsell and Other Inappropriate New Matter ("Cox Motion to Strike").

[2] Cox Motion to Strike at 9.

[3] 47 C.F.R. § 1.106.

[4] 47 C.F.R. § 1.106.

calls by their geographical starting and ending points raises billing and technical issues that have no concrete, workable solutions at this time."[5] The Bureau's holding was based exclusively on practical considerations of implementing Verizon's proposed contract language; the Bureau did not find that Verizon's proposal was contrary to law (or that Cox's proposal was consistent with law). Verizon submitted the Declaration of William Munsell ("Munsell Declaration") with its Petition so that the resolution of this important legal dispute would not be distorted by an erroneous "default" finding that Verizon's position could not be implemented. The interconnection agreements that will result from this proceeding will last several years, so the Bureau should not foreclose compliance with the law based on an outdated presumption that the law cannot be implemented.

Cox's claim that the Munsell Declaration is not allowed by the rules is wrong. In submitting this limited update on factual developments since the close of the hearings, Verizon exercised its right pursuant to 47 C.F.R. § 1.106 to rely on facts not previously presented. In fact, the Munsell Declaration simply elaborates and updates facts that *were* previously presented. As even Cox recognizes, Verizon's witness specifically identified the use of a traffic study to implement Verizon's proposal.[6] The Munsell Declaration provided a concrete example that was developed after the parties submitted post-hearing briefs in this case.

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[5] *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration; In the Matter of Petition of Cox Virginia Telcom, Inc. Pursuant to section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration; In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc*, Memorandum Opinion and Order, CC Docket Nos. 00-219, 00-249, 00-251, DA 02-1731 at ¶ 300 (Wireline Comp. Bur.) (rel. July 17, 2002) (*Order*).

[6] *See* Cox Motion to Strike at 4. Cox's cross-examination of Verizon's witness at the evidentiary hearing on October 11, 2001, focused on the practical application of Verizon's proposal, that is,

Cox complains that Verizon failed to explain how its Petition and accompanying Munsell Declaration comply with the rules, focusing only on a footnote in which Verizon referenced the requirements of the Commission's rule: "The Bureau should accept this additional testimony because it is information developed after the hearing and it is in the public interest."[7] Both the Petition and Munsell Declaration clearly support the assertion that the traffic study was developed after the hearing and post-hearing briefs. No further elaboration on this requirement of the rule was necessary. Nevertheless, Cox now claims that the Munsell Declaration should be ignored because (i) Verizon should have conducted the traffic study earlier and (ii) once developed, Verizon should have submitted something after the filing of post-hearing briefs and before the Bureau issued the *Order*.

Cox's suggestion that Verizon should have conducted the traffic study earlier is silly. The traffic study Mr. Munsell describes was not performed *for* this case and was not scheduled with a view to the calendar in this case. Its timing was driven by the case for which it was prepared -- which happened to produce this evidence after the post-hearing briefs in this case. And given that the Bureau assigned great importance to its concern about the practicality of developing a traffic study for VFX traffic, it is fortunate that an example of the real-world

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determining the geographical end points of virtual FX calls. Tr. 1808-15. Verizon's witness suggested that the parties "do a traffic study for a period of time or share information so that they could develop a factor to apply to extract traffic." Tr. 1813. He suggested that Cox and Verizon work together to identify Cox's end users to determine the geographical end points of the call, whether by Cox identifying the location of its customer or by the use of other information. *Id.* at 1814-15. In its post-hearing Brief, Verizon stated:

> Verizon VA has proposed a method for doing so here. It requires the Parties to conduct a traffic study or create a factor to identify what percentage of apparent local traffic is VFX traffic. Then, if the CLECs will accept the Verizon VA VGRIP proposal, the Parties can exchange that VFX traffic on a bill-and-keep basis. Tr. 1813, 1892.

Verizon VA Post-Hearing Brief at IC-19. Verizon also noted that it had "successfully negotiated such an arrangement with at least one other carrier." *Id.* n.9.

practicality of Verizon's suggested approach arose in time to assist the Bureau's reconsideration.[8] Traffic studies are commonly used in the industry to harmonize the law's requirement to base intercarrier compensation on actual geographic end points with the practical difficulties of doing so. The Munsell Declaration shows that the same approach works to address the VFX issue.

It is no surprise that Cox, and other CLECs, have no incentive to cooperate in the development of traffic studies or other practical solutions for the VFX problem. CLEC use of virtual NXX assignments as a way to ***collect*** reciprocal compensation rather than ***pay*** any form of intercarrier compensation will fast replace Internet traffic as the next big regulatory arbitrage opportunity. The only way the Bureau can ensure that Cox and other CLECs cooperate to solve the practical problems is to order them to do so. It is not Verizon's burden alone to solve this problem -- it is an industry problem, and the parties' agreement must leave room for an industry solution. In considering Verizon's Petition, the Bureau need not choose any particular implementation method -- whether through traffic study or otherwise. Rather, the Bureau needs to put the onus on reluctant CLECs, including Cox, to cooperate in developing a way for the parties' to bill intercarrier compensation in compliance with the law -- that is, based on the actual end points of the traffic.

The Bureau should consider the Munsell Declaration because it is in the public interest to do so. Contrary to Cox's assertion that Verizon provided no "justification for offering the

[7] Verizon's Petition at 22 n.49.

[8] Cox suggests that Verizon should have disregarded Commission rules by filing new arguments or information after the parties' submission of post-hearing briefs and before the Bureau's release of the *Order*. It is this suggestion, and not Verizon's filing, that runs afoul of Commission rules. Although the Commission rules specifically contemplate the submission of new factual information with petitions for review or reconsideration, they make no provision for the sort of post-hearing filing that Cox suggests.

Munsell Declaration that satisfies Rule 1.106,"[9] Verizon's Petition made clear that it is not in the public interest to ignore Commission precedent based on a misunderstanding about the practical considerations associated with billing in accordance with applicable law. The Munsell Declaration may not work out every implementation detail, but the Bureau resolved many other issues in a manner that leaves some implementation details outstanding. For example, the Bureau ordered Verizon to allow AT&T and WorldCom to reserve dark fiber, but did not require AT&T and WorldCom to provide detail on how Verizon would have to implement this new wholesale offering. The Bureau also required Verizon to allow AT&T to use its own loop pre-qualification tools, but again left implementation details for the parties to arrange. Likewise, the parties can work out a means to implement traffic studies to identify VFX traffic -- *if* the Bureau requires them to do so.

Finally, Cox suggests that the Commission's arbitration procedures make 47 C.F.R. § 1.106 inapplicable to the present proceeding.[10] According to Cox, "the Commission specified when and how parties could provide evidence." Cox is right -- the Commission did specify, and that specification includes 47 C.F.R. § 1.106, which provides for reliance on new factual information in appropriate circumstances. Verizon's Petition and the Munsell Declaration meet the circumstances set forth in this Commission rule. Although Cox complains about the right to cross-examine Mr. Munsell or submit rebuttal evidence,[11] Cox's rights are not violated when the Commission's rule specifically contemplates this new factual submission notwithstanding the procedural stage of the arbitration. Moreover, should the Bureau grant Verizon's request for

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[9] Cox Motion to Strike at 4-5.

[10] Cox Motion to Strike at 6-7.

[11] Cox Motion to Strike at 6-7.

reconsideration, it is free to determine whether it can grant the request on the existing record or whether additional information or argument is necessary.

The Bureau should overrule Cox's Motion and consider the Munsell Declaration, because that is clearly in the public interest and in compliance with 47 C.F.R. § 1.106. The Bureau, moreover, should reject Cox's suggestion to "assess a forfeiture," because Verizon exercised its right under a Commission rule.

Respectfully submitted,

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